THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.11705 OF 2006

-

Date: 13-12-2006

-

Between:

Shaik Abdus Sattar, s/o Shaik Mahboob,

Aged 56 years, Occ: Private service,

H.No.22-8-512/11-A, Kochay Khateeb,

Purani Haveli, Hyderabad-500 002.

… Petitioner.

And

1. Municipal Corporation of Hyderabad,

through its Commissioner,

Tank Bund, Hyderabad and another.

… Respondents.

* * *

ORDER:

-

Heard Sri Sriram Krishna Moorthy, learned counsel representing the writ petitioner and Sri Rama Rao Ghanta, learned Standing Counsel representing the first respondent. It is stated that the second respondent was served, but none represents the second respondent.

2. Sri Sriram Krishna Murthy, learned counsel representing the writ petitioner would submit that though there is absolutely no impediment to further proceed with the demolition activity, the first respondent-Municipal Corporation of

Hyderabad, is not taking proper steps in this regard, and hence, suitable directions are to be issued. Learned counsel also had explained different judicial proceedings referred to in the affidavit filed in support of the writ petition and would maintain that in the light of the specific stand taken by the first respondent in the counter-affidavit further suitable directions may be issued.

3. *Per contra*, Sri Rama Rao Ghanta, learned counsel representing the first respondent had placed before this Court Lr.No.UC/512/11/8/22/C1/MCH/06 dated 29.8.2006 and would submit that in view of every possibility of the sudden collapse of whole structure during demolition activity, the matter had been referred to the Executive Engineer, Zone-I with a request to take up rest of the demolition activity by engaging technical experts and skilled personnel for safe demolition. The learned counsel also had taken this Court through the averments made in the counter-affidavit filed on behalf of the first respondent and would submit that the first respondent absolutely has no objection to further proceed with the demolition activity in accordance with law in the facts and circumstances.

4. The writ petition is filed praying for calling of records of the first respondent relating to its notice dated 12.9.2001 under Section 636 of the Hyderabad Municipal Corporation Act, bearing Sl.No.17, Book No.106 in respect of H.No.228-512/11 situated at Koocha-e-Kateeb, Purani Haveli, Hyderabad, and issue a writ of Mandamus directing the first respondent to demolish the above structure in implementation of the above notice and pass such other suitable orders.

5. It is stated that the house of the writ petitioner and that of respondent No.2 are part of the building constructed by late Mirza Kaleemullah Baig, father of the respondent No.2, who sold the southern portion and the writ petitioner purchased the same in the year 1992 and the said house bearing H.No.22-8-512/11-A is under his possession. It is a double storeyed building. It is also stated that northern side wall of the two rooms of writ petitioner abuts the house of the respondent No.2 i.e., this wall is in between the two houses of the writ petitioner and the respondent No.2 and this wall separates the respective houses. It is also stated that the house of respondent No.2 is having only ground floor and the ground floor of the petitioner's house and the house of the respondentNo.2 is a composite structure. On slab and the ground floor of both the houses extends over their two houses. The said separating wall is of brick and mud having no pillars. It was constructed about 40 years ago. On the said wall, the first storeyed wall and roof of the petitioner's house are resting. His predecessors in title constructed the first storey of petitioner's house in 1979. The house of respondent No.2 bears municipal No.22-8-512/11. It is also stated that in the year 2001, respondent No.2 started construction of first floor by chiselling the separating wall and laying roof thereon and it is stated that the petitioner filed O.S.No.3954 of 2001 on the file of V Junior Civil Judge, City Civil Court, Hyderabad. Certain other judicial proceedings like C.M.A.No.264 of

2002 also had been referred to. It is stated C.R.P.No.5576 of 2002 is said to be pending. W.P.No.18758 of 2001 was referred to and it is stated that in the light of the stand taken by the learned Standing Counsel while dismissing the writ petition dated 10.9.2001 it was observed as hereunder.

" In the light of the statement made by the learned Standing Counsel for the Corporation, no further directions as such are required to be issued except to observe that the action initiated against the 2nd respondent shall culminate in appropriate order in accordance with law."

It is stated that second respondent filed O.S.No.5225 of 2001 on the file of XIII Junior Civil Judge-cum-I Additional Rent Controller, Hyderabad, for declaration that the notice of respondent No.1 under Section 636 of Hyderabad Municipal Corporation Act, dated 12.9.2001, in respect of construction of first floor over House No.22-8-512/11, situated at Koocha-e-Kateeb, Purani Haveli, as illegal and void and also prayed for grant of perpetual injunction and the petitioner was also added as proforma defendant in the said suit and the said suit was dismissed on 19.4.2005. The appeal filed by the respondent No.2 A.S.No.371 of 2005 was also dismissed on 27.02.2006 by the Court of XII Additional Chief Judge, City Civil Court, Hyderabad (Fast Track Court). Several other factual details had been narrated and thus it is stated that in the light of the orders made in W.P.No.18758 of 2001 and also in the light of dismissal of O.S.No.5225 of 2001 and A.S.No.371 of 2005 referred to supra, there is absolutely no impediment operating on the first respondent to further proceed with demolition activity. But, for the reasons best known, appropriate action is not being taken.

6. In the instructions vide Lr.No.UC/512/11/8/22/C1/ MCH/06 dated 29.8.2006, the office of the Assistant City Planner, Town Planning Section, Circle No. I, had specified as hereunder.

" With reference to the subject it is to inform you that the action has been initiated and partly demolished the illegal structure along with projection of balcony in Pr.No.22-8-512/11 at Purani Haveli, Hyderabad on 29-7-2006 in compliance to the orders of the Hon'ble court in W.P.No.11705/06. During the course of demolition necessary photographs were taken the same are herewith enclosed for kind perusal of the Hon'ble court.

The illegal structure of first floor over the existing ground floor constructed on loan bearing walls without any RCC frame structure and the first floor roof is completely rests on the walls. Further it is submitted that there is every possibility of sudden collapse of whole structure during the demolition, however the slab of the first floor was

damaged which is evident from the spot photographs taken during the course of action. Basing on the instability of the structure the entire slab could not be demolished in one spell which may cause endanger to the surrounding neighbouring properties as well as the existing and permitted portion. In order to complete the work the matter has already been referred to the Executive Engineer, Zone-I with a request to take up the rest over demolition by engaging technical experts and skill persons for safe demolition, so as to submit compliance report to the Hon'ble High Court at an earliest."

7. In the counter-affidavit, no doubt certain allegations are formally denied. But, it is stated that it is a fact that the petitioner filed W.P.No.18758 of 2001 and further it is stated that the suit as well as the appeal filed by the second respondent were dismissed. Further specific stand is taken that the first respondent had given notice on 15.7.2006 to the second respondent directing him to remove unauthorised construction within seven days, otherwise first respondent will remove the unauthorised construction departmentally. In the facts and circumstances, it cannot be said that the first respondent had not moved the matter at all. Some action already had been initiated, but the writ petitioner is not satisfied with the said action and further complains that further action to be completed at an earliest point of time.

8. Specific stand is taken that in view of the specific instructions referred to supra inasmuch as the assistance of technical experts to be taken for pulling down such structures, which may ultimately result in the collapse of building itself, it may be that some time is required in this regard. However, in view of the facts and circumstances since there is a lapse of sufficient time in between, in view of the pendency of the present writ petition, this court is of the considered opinion that in the light of the facts referred to supra, the writ petition be disposed of directing the first respondent to carry out the rest of the demolition activity if need be with the assistance of the experts at an earliest point of time, preferably, within a period of four weeks from the date of receipt of a copy of this order.

9. With the above direction, the writ petition is disposed of. No order as to costs.

_____

P.S.NARAYANA, J.

Date: 13th December 2006.

BSB